UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jose Luis Alvarez Martinez Petitioner, Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara San Antonio Field Office Director; Rose Thompson, Warden of Karnes County Immigration Processing Center Respondents.	**Civil Case No. 5:25-cv-01007**

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

In May 2025, after having spent nearly 14 years attending immigration removal proceedings, and after having obtained a prima facie determination for benefits under the Violence Against Women's Act (VAWA) that place him on a path toward lawful permanent residence (LPR) status, Petitioner Jose Luis Alvarez Martinez was arrested by Immigration and Custody Enforcement (ICE) agents without a lawful basis. Indeed, the Petitioner had already been released on immigration bond twice in 2011 and 2017, and he had complied with the terms of those bonds. Moreover, his removal proceedings have been administratively closed since May 2023. Since his release on bond in 2017, he had no new criminal arrests or other changed circumstances that justify his re-detention.

On July 15, 2025, Immigration Judge (IJ) Meredith Tyrakoski, recognizing that there was no significant change in circumstance, ordered that the Petitioner be released from immigration

custody upon posting a $3,000 bond. *See Exh. A* (IJ order). Unhappy with the IJ's order, ICE filed an automatic stay of the IJ's order under 8 C.F.R. § 1003.19(i)(2). *See Exh. B* (ICE's EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination). This unilateral filing prevents the Petitioner from posting bond, and from being released from custody.

The automatic stay violates the Petitioner's due process right to liberty because it provides the Petitioner with no opportunity to challenge the stay. Indeed, several district courts have determined that the automatic stay provision under 8 C.F.R. § 1003.19(i)(2) violates the Fifth Amendment's right to due process and is ultra vires to the delegating statute. *See, e.g., Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237 (D. Minn. May 21, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 U.S. Dist. LEXIS 157236 (D. Neb. Aug. 14, 2025); *Kordia v. Noem*, No. 3:25-cv-01072-L-BT, 2025 U.S. Dist. LEXIS 136346 (N.D. Tex. June 27, 2025) (Magistrate's Findings, Conclusions, and Recommendation)).[1] This Court should follow suit and grant the Petitioner a temporary restraining order prohibiting the Respondents from continuing to unlawfully detain Petitioner during the pendency of his Petition for Writ of Habeas Corpus.

II. LEGAL FRAMEWORK GOVERNING APPEALS OF IMMIGRATION JUDGE BOND DECISIONS AND STAYS WHILE BOND APPEAL IS PENDING

Under 8 U.S.C. § 1226(a), DHS has authority to arrest and detain certain noncitizens "pending a decision on whether the alien is to be removed from the United States . . ." However, the DHS "may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General . . . ." 8 U.S.C. § 1226(a)(2)(A).

[1] *See also Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321 (D. Minn. Aug. 15, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 U.S. Dist. LEXIS 160314 (D. Neb. Aug. 19, 2025); *Jimenez v. Kramer*, No. 4:25CV3162, 2025 U.S. Dist. LEXIS 157245 (D. Neb. Aug. 14, 2025).

Upon arrest and detention pending a removal proceeding, DHS will make a determination on whether to allow the noncitizen to be released pending the posting of a bond. 8 C.F.R. § 1236. "Custody and bond determinations made by the [DHS] pursuant to 8 C.F.R. § 1236 may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236." 8 C.F.R. § 1003.19(a).

Once a bond has been granted by the IJ, the DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen's return to custody. *See, e.g.*, *Matter of Sugay*, 17 I&N at 640 (BIA found a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines...."). Once an IJ has set a bond, either party can appeal the IJ's order on bond to the Board of Immigration Appeals (Board). 8 C.F.R. § 1003.19(f).

A DHS appeal from an IJ order releasing a noncitizen standing alone does not stay the IJ's order. Rather, DHS must apply for a stay of custody pending the appeal. 8 C.F.R. § 1003.19(i). The regulation provides two alternatives for DHS when seeking to stay an IJ bond order:

> (1) *General discretionary stay authority.* The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.
>
> (2) *Automatic stay in certain cases.* In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form

> EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

8 C.F.R. § 1003.19(i)(1) & (2). In this case, DHS elected to pursue an automatic stay under paragraph 2. *See Exh. B*. The filing of an automatic stay provides the noncitizen with no process to contest the stay order before the IJ or the Board.

The stay will lapse if "DHS fails to file the notice of appeal with the Board within ten business days of the issuance of the order of the IJ." 8 C.F.R. § 1003.6(c)(1). To maintain the automatic stay, 8 C.F.R. § 1003.6(c)(1) requires the DHS to file a notice to appeal with the BIA and include a "certification by a senior legal official that –

> (i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and
>
> (ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

8 C.F.R. § 1003.6(c)(1)(i)-(ii). The filing of the notice of appeal with the above certification ensures that the automatic stay will remain in place while the DHS pursues its appeal. Noncitizens are not afforded any procedure to challenge the filing of the stay or the validity of the certification.

"If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 1003.6(c)(4). However, the DHS can seek a discretionary stay "at a reasonable time before the expiration of the period of the automatic stay .

. . ." 8 C.F.R. § 1003.6(c)(5). If the Board does not adjudicate the motion for a discretionary stay within the 90-day period, the stay will remain in effect for an additional 30 days to permit the Board to rule on the motion. *Id.* If the Board grants the noncitizens release, denies the motion for discretionary stay, or fails to adjudicate the motion before the automatic stay expires, the stay is automatically stayed for an additional five days to permit DHS to decide whether to refer the case to the Attorney General. 8 C.F.R. § 1003.6(d). If DHS decides to refer the case, then the stay would remain in place for an additional fifteen days to permit the Attorney General time to consider the merits of the referred decision. Thus, the potential for prolonged custody may exceed far more than 90 days.

III. STATEMENT OF FACTS

The Petitioner, a citizen of Mexico, entered the United States approximately 30 years ago when he was about 15 years old. He is married to a U.S. citizen and has four U.S. citizen children, including one minor child who turns 15 years old later this month. *See Exh. C* (Petitioner's Affidavit). While Petitioner remains unlawfully detained, his minor child is in the custody of a family friend, without a stable home, and is suffering significant emotional and financial hardship.

The Petitioner has a conviction from over 15 years ago for possession of a firearm. At a probation check-in in 2011, he was apprehended by ICE officials and placed into removal proceedings. He requested a custody redetermination from the IJ in 2011 and was granted a bond in the amount of $7,500 with no specific conditions added. ICE waived appeal.

In 2017, he was apprehended a second time by ICE after having been stopped for driving without a license. He again requested bond from an IJ and was granted a bond in the amount of $15,000, again with no specific conditions; ICE again waived appeal. He attended all removal

hearings as required, and his case has been administratively closed before the immigration court since May 2023. *See Exh. D* (IJ's order closing case).

On May 10, 2023, the Petitioner filed a petition to be classified as a special immigrant under the Violence Against Women Act (VAWA). *See Exh.* E. The petition is pending before United States and Immigration Service (USCIS); however, USCIS issued a prima-facie determination, which is valid until October 15, 2025. *Id.* This determination demonstrates prima facie eligibility for the benefit sought. On May 15, 2023, the IJ administratively closed the Petitioner's removal proceedings to await the final results on his VAWA petition.[2]

Despite the IJ's order administratively closing his case, DHS re-detained the Petitioner on May 21, 2025, and placed him in custody at the Karnes detention facility without a bond. In violation of Board precedent, ICE has not provided a material change in circumstances justifying the Petitioner's re-detention. *Matter of Sugay*, 17 I&N Dec. at 640.

On July 9, 2025, the Petitioner, through counsel, filed an application for re-determination of his custody status with the IJ. On July 15, 2025, the IJ held a hearing on the matter. At that hearing, the ICE attorney argued that the Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b) because he entered the U.S. without inspection nearly 30 years ago, despite the fact that he has been released twice on bond in the past without ICE making this argument, and 8 U.S.C. § 1225(b) has never been held to apply to non-citizens within the U.S. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (Noncitizens "already in the country" are detained under § 1226(a) and (c) pending the outcome of removal proceedings.). In the alternative, the ICE attorney argued that the Petitioner constituted a "danger to the community" based on his arrest for

[2] On or around July 16, 2025, after Petitioner had been detained for nearly a month, ICE moved to recalendar his proceedings. On July 21, 2025, the IJ denied that request, noting that Petitioner has a bona fide determination on his VAWA petition and had been granted bond in the amount of $3,000. *See Exh. D.* As a result, there are no active removal proceedings pending as they remain administratively closed.

possession of a firearm from nearly 15 years ago. The IJ disagreed with ICE and entered an order granting the Petitioner's request for release on bond. The IJ entered an order for the Petitioner to be released upon the posting of a $3,000 bond. *See Exh. A.*

In her bond memorandum explaining her reasons for granting bond, the IJ rejected the DHS's argument that the Petitioner is subject to "mandatory detention" because it is "at odds with BIA precedent." *Id.* The IJ "after careful consideration of the evidence" found that the Petitioner's 2010 conviction for unlawful possession of a firearm and a 2017 arrest for driving without a license did not make the Petitioner a danger to the community. Finally, the IJ found that since the Petitioner "has a clear pathway to relief from removal, that he has strong familial ties to the United States, and that he has a demonstrated record of appearing in court and submitting to the authority of DHS," he "is a relatively low flight risk." *Id.*

Unhappy with the IJ's decision, DHS reserved appeal to the BIA and filed an automatic stay of the IJ's decision pursuant to 8 C.F.R. § 1003.19(i)(2). *See Exh.* B. The Petitioner is not afforded any process to challenge the stay of his removal. On July 28, 2025, DHS perfected its appeal to the Board by filing a notice of appeal. *Id.* DHS attempts to satisfy this regulation requiring a certification from a senior legal official by providing "Senior Legal Official Certification" from David D. Wallen, who purports to be a "Deputy Chief Counsel." *Id.* DHS provides no evidence or statement about how a "Deputy" is a "senior legal official" as required by the regulation. Wallen certifies that he is "satisfied that the evidentiary record supports the contentions justifying the continued detention of the alien and the legal arguments are warranted by existing law . . . ." Yet, in the next sentence Wallen claims that the Petitioner is subject to mandatory detention under "236(c) of the Immigration and Nationality Act, 8 U.S.C. § 1226(c)."

Id. Before the IJ, DHS argued that mandatory detention was under 8 U.S.C. § 1225, not § 1226(c), as Wallen certifies.

The Petitioner is afforded no process or opportunity to challenge the validity of the stay before the Board. He cannot even point out that the certification is inconsistent with the grounds of appeal. He is provided with no process whatsoever to challenge the automatic stay of the IJ's order. The Petitioner and his family are suffering as a result of his prolonged, unconstitutional detention.

IV. ARGUMENT

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). The movant must establish four factors: "(1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interests." *Ladd v. Livingston*, 777 F.3d 286, 288 (5th Cir. 2015).

In constitutional cases, the first factor above is often dispositive. *See Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (citing *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020) (order). That is because "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Moreover, since no cognizable

harm results from halting unconstitutional conduct, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001) (citation omitted).

Here, the Petitioner is detained in clear violation of his Fifth Amendment right to due process. A neutral IJ, on three separate occasions, has found that Petitioner poses neither a danger to the community nor a significant flight risk. Nevertheless, DHS invoked the automatic stay provision to unilaterally override the IJ's custody determination—without any procedural safeguards or opportunity for the Petitioner to be heard. This ongoing deprivation of liberty, without due process, is causing irreparable harm that cannot be remedied after the fact. It is firmly in the public interest to enjoin such unconstitutional conduct. Accordingly, a temporary restraining order is necessary to prevent the government from continuing to infringe upon Petitioner's constitutionally protected liberty interest while the Court considers the merits of his claim.

A. Petitioner is likely to succeed on the merits of his claim that the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) violated Petitioner's due process rights under the Fifth Amendment.

The Fifth Amendment's Due Process Clause prohibits the government from depriving an individual of life, liberty, or property without due process of law. The Due Process Clause applies to all "persons" within the borders of the United States, "including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). When the Government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the available procedures; and (3) the Government's interest,

including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). These three *Mathews* factors strongly weigh in favor of granting Petitioner's motion.

1. Petitioner has a significant liberty interest in being free from confinement.

The Petitioner has a compelling interest in remaining free from government confinement—an interest that "lies at the heart of the liberty" protected by the Fifth Amendment's Due Process Clause. *See Zadvydas*, 533 U.S. at 690; *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("The interest in being free from physical detention" is "the most elemental of liberty interests."). The impact of this deprivation is substantial insofar as continued confinement has separated Petitioner from his minor U.S. citizen child who suffers from mental health issues. *See Exh. C.* Additionally, it has prevented him from earning income to provide for his family, which is causing significant financial hardship. *See Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) ("The deprivation he experienced while incarcerated was, on any calculus, substantial. He was locked up in jail. He could not maintain employment or see his family or friends . . . ."); *see also Gunaydin*, 2025 U.S. Dist. LEXIS 99237, at *20 ("He is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning . . . lack of privacy, and most fundamentally, the lack of freedom of movement."). Given the magnitude of this constitutional interest, any deprivation of liberty must strictly comply with the requirements of due process.

2. The automatic stay provision creates a substantial risk of erroneous deprivation.

The risk of erroneously depriving the Petitioner of liberty is exceptionally high for several reasons. First, the risk of error is high because the provision allows DHS—the non-prevailing party in the bond proceedings—to unilaterally override the IJ's decision without providing any

procedural safeguards. *See Zavala v. Ridge*, 310 F.Supp.2d 1071, 1078 (N.D. Cal. 2004) ("[T]he [automatic stay] procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor."). Further, allowing DHS to unilaterally prolong detention despite an IJ's bond determination, goes beyond the limits of the Attorney General's statutory authority under 8 U.S.C. § 1226(a) and renders 8 C.F.R. § 1003.19(i)(2) "ultra vires." *See Anicasio*, 2025 U.S. Dist. LEXIS 157236 at *13 (noting that 8 U.S.C. § 1226(a) permits the Attorney General to delegate custody determinations to "any officer, employee or agency of the Department of Justice [DOJ]" and "DHS, the party that invoked the automatic stay" is not within the DOJ).

Second, as the Minnesota District Court recently observed, "there is no requirement that the agency official invoking [the automatic stay] consider any individualized or particularized facts." *Günaydin*, 2025 U.S. Dist. LEXIS 99237 at *22–23. Nor does the provision impose any standards that DHS must satisfy in order to invoke the stay. *Id.* at *23. Unlike traditional stays in federal court pending an appeal, there is no requirement for DHS to demonstrate irreparable harm, likelihood of success on the merits, or any other threshold showing. *Cf. Nken v. Holder*, 556 U.S. 418, 433 (2009) (A stay is "an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.") (internal quotations omitted). The automatic stay regulation "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Günaydin*, 2025 U.S. Dist. LEXIS 99237, at *24.

Finally, because the stay is automatic and not subject to review by an impartial adjudicator, it deprives the Petitioner of any meaningful opportunity to challenge it as required by the Fifth Amendment. *See Mathews*, 424 U.S. at 333 ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). Indeed, all DHS

has to do to invoke the stay is to file Form EOIR-43 with the Immigration Court. *See* 8 C.F.R. § 1003.19(i)(2). Thus, the second *Mathews* factor weighs in favor of Petitioner.

3. *DHS' interest in retaining its unilateral stay authority is minimal.*

DHS' interest in preserving its unilateral authority to prevent the release of noncitizens who have already been found neither a significant flight risk nor a danger to the community is minimal. *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003) ("[T]he purpose of the automatic stay provisions is to prevent the [noncitizen] from fleeing and to protect the public from harm. The bond determination from, the Immigration Judge has already addressed these underlying concerns."). In this case, proceedings are not active, as the IJ administratively closed proceedings in May 2023, and they remain closed while USCIS adjudicates Petitioner's VAWA petition. As such, DHS' potential interest in ensuring Petitioner returns to immigration proceedings has already been satisfied—particularly given that Petitioner is actively pursuing immigration relief before USCIS. *See Zadvydas*, 533 U.S. 678, 690 ("But by definition the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best."). The second potential justification—protecting the community—is likewise not implicated as the IJ had previously determined that Petitioner's 15-year-old conviction does not render him dangerous to the community. *See id.* ("[W]e have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections."). In short, both possible rationales for detention—flight risk and danger to the community—had already been addressed and rejected by the IJ.

To the extent DHS believes the IJ erred in granting bond, it may seek an emergency stay under 8 C.F.R. § 1003.19(i)(1). Utilizing existing procedures imposes no additional burden on DHS. Unlike the automatic stay invoked in this case, the discretionary stay requires DHS to justify

the stay to the Board and affords the noncitizen an opportunity to respond. Permitting the Board to determine whether a stay of release is in fact warranted reduces the risk of erroneous deprivation without any meaningful costs to the government. Accordingly, Petitioner has demonstrated that he satisfies the factors set forth in *Mathews* and, therefore, has shown a substantial likelihood of success on the merits of his procedural due process claim.

B. Petitioner will suffer irreparable harm absent injunctive relief.

The right to be free from unconstitutional detention constitutes an irreparable injury. *See, e.g.*, *Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 U.S. Dist. LEXIS 90261, at *6 (N.D. Cal. May 12, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.")). Courts have also found that family separation and prolonged detention qualify as irreparable injury. *See, e.g.*, *Angelica S. v. United States HHS*, No. 25-cv-1405 (DLF), 2025 U.S. Dist. LEXIS 109051, at *27 (D.D.C. June 9, 2025) (citing *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502 (noting that family "[s]eparation irreparably harms plaintiffs every minute it persists"). In this case, Petitioner's unlawful detention has caused his U.S. citizen children to suffer emotional and financial hardship. Specifically, his minor U.S. citizen son has been in the care of a family friend since his mother abandoned him approximately three months ago while Petitioner is detained. *See Exh. C.* In March 2025, the child suffered a mental health crisis requiring a six-day hospitalization. Petitioner reasonably fear that his continued detention will further harm child's mental health. *Id.* Accordingly, this irreparable harm warrants immediate injunctive relief.

C. The balance of equities and the public interest favor granting the temporary restraining order.

As stated above, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v.*, 274 F.3d at 400; *see also Hernandez v.*

Sessions, 872 F.3d 976 (9th Cir. 2017) ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention. . ."). The government suffers no cognizable harm from being enjoined from unconstitutional conduct. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Here, the IJ—after three separate bond hearings—concluded that Petitioner poses neither a danger to the community nor a flight risk. The record shows that Petitioner has demonstrated rehabilitation, has not reoffended in over 15 years, and his most recent infraction is a nonviolent citation for driving without a license in 2017.

There is no evidence of changed circumstances or imminent risk to justify continued detention. Nor is there any public or governmental interest served by preventing Petitioner from returning to his family and livelihood while this case is adjudicated. The government cannot plausibly claim harm from a temporary order requiring it to comply with constitutional mandates.

Any administrative burden imposed on Respondents by temporarily halting unlawful detention is minimal and far outweighed by the substantial harm Petitioner continues to suffer each day his liberty is denied. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). As such, the balance of equities and the public interest weigh decisively in favor of issuing a temporary restraining order and preliminary injunction.

D. Petitioner has complied with the requirements of Federal Rule of Civil Procedure 65.

Petitioner asks this Court to find that he has complied with the requirements of Fed. R. Civ. P. 65, for the purpose of granting a temporary restraining order. Pursuant to Rule 65(b)(1), this Court may issue a temporary restraining order without written or oral notice to the adverse party

or its attorney only if a) "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Petitioner before the adverse party can be heard in opposition; and 2) the Petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Here, Petitioner's affidavit in support of his claim of immediate and irreparable injury. *See Exh. C.* The undersigned also has attached a certification regarding notice to opposing counsel. *See Exh. F* (Email from Alejandra Martinez to U.S. Assistant Attorney Lacy L. McAndrew dated August 19, 2025). The U.S. Attorney's Office represents Respondents in civil litigation in which they are named as respondents. While proper service may not have been made on Respondent's counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met. *See Exh. G,* Declaration of Alejandra Martinez.

Rule 65(c) also states that the court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the circumstances of the instant suit, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to release Petitioner from unconstitutional detention, should not result in any conceivable financial damages to Respondents. *See, e.g., Enamorado*, 2025 U.S. Dist. LEXIS 90261, at *6.

V. CONCLUSION

For the foregoing reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction prohibiting the Respondents from continuing to

detain him pending the resolution of his Writ of Habeas Corpus and to order that he be released from custody immediately upon a posting of a $3,000 bond as ordered by the IJ.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on today's date, August 21, 2025, I electronically filed the above Motion for Temporary Restraining Order and Preliminary Injunction by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Defendants' counsel.

/s/ Alejandra Martinez
Alejandra Martinez